

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN SCHULER, JR.,

Defendant.

ORDER

93-cr-105-jcs

On May 27, 2009, I denied defendant's motion for relief from final judgment in which he sought reconsideration of the May 12 order affirming the denial of defendant's motion for a sentence reduction under 18 U.S.C. § 3582. Now defendant has filed a notice of appeal. He has not paid the \$455 fee for filing his notice of appeal, which is required if he is to take an appeal from the denial of a § 3582 motion. Therefore, I construe defendant's notice as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915.

As I explained in the May 27, 2009 order, defendant is not eligible for a sentence reduction because the Sentencing Commission did not give retroactive effect to the change in U.S.S.G. § 4A1.2(c)(1) and (2) (the guideline governing the calculation of criminal history

points for offenses that are consolidated for sentencing). Because defendant wants to raise a legally frivolous argument on appeal, I must certify that his appeal is not taken in good faith.

Pursuant to Fed. R. App. P. 24, defendant has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. His motion must be accompanied by an affidavit as described in the first paragraph of Fed. R. App. P. 24(a) and a copy of this order.

ORDER

IT IS ORDERED that defendant John Schuler, Jr.'s request for leave to proceed in forma pauperis on appeal from this court's order of May 27, 2009 is DENIED. I certify that defendant's appeal is not taken in good faith.

Entered this 23rd day of June, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge